

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
BENNETT, CHARLOTTE, : Docket #22cv7846
Plaintiff, :
- against - :
CUOMO, et al., : New York, New York
Defendants. : February 1, 2024
----- :

PROCEEDINGS BEFORE
THE HONORABLE SARAH L. CAVE,
UNITED STATES MAGISTRATE JUDGE

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE COURT: Good afternoon, this is Magistrate Judge Cave. We're here for a discovery conference in Bennett v. Cuomo, case number 22cv7846. May I have the appearances starting with the plaintiff please.

MS. LAURA SCHNELL: Good afternoon, Your Honor, Laura Schnell for the plaintiff Charlotte Bennett, together with Herbert Eisenberg at the firm of Eisenberg & Schnell, and also on the phone Debra Katz, Rachel Green, and I believe Kayla Morin at the firm of Katz, Bank, Kimmin.

THE COURT: All right, thank you, good afternoon. For Mr. Cuomo.

MR. THERESA TRZASKOMA: Hi, good afternoon, Your Honor, Theresa Trzaskoma, law firm Sher Tremonte, on behalf of Governor Cuomo, and I believe my co-counsel is on as well.

THE COURT: Thank you.

MS. TRZASKOMA: But I'll let her introduce herself.

THE COURT: All right, thank you.

MS. RITA GLAVIN: Good afternoon, Judge Cave, Rita Glavin of Glavin PLLC for former Governor.

THE COURT: Okay, good afternoon. For Ms. DeRosa.

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MR. GREGORY MORVILLO: Good afternoon, Your Honor, Gregory Morvillo on behalf of Ms. DeRosa and Anthony Gruppuso and Sarah Ann Sulkowski who represent Ms. DeRosa are also present on the call.

THE COURT: All right, good afternoon. For Ms. Mogul.

MR. MICHAEL DELIKAT: Good afternoon, Your Honor, Michael Delikat and Brianna Messina from Orrick representing Ms. Morgul.

THE COURT: All right, good afternoon. For Ms. DesRosiers.

MR. JYOTIN HAMID: Good afternoon, Your Honor, this is Jyo Hamid at Debevoise & Plimpton. I believe on the line also are my colleagues Leah Rosenberg and Soren Schwab for Ms. DesRosiers.

THE COURT: Good afternoon. For non-party Ms. Boylan.

MS. DANYA PERRY: Good afternoon, Your Honor, this is Danya Perry from Perry Law along with my colleague Krista Oehlke. Also on the call is my co-counsel Julie Gerchik.

THE COURT: All right, good afternoon. And the Attorney General's Office.

MS. SERENA LONGLEY: Hi, good afternoon, Your

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2 Honor, this is Serena Longley from the New York State
3 Attorney General's Office, and I also have colleagues
4 from my office on the line, but they don't expect to
5 speak.

6 THE COURT: All right, very good, thank you.
7 Is there anyone I missed or anyone who would like to
8 state their appearance?

9 MR. DAVID PIKUS: If I may, Your Honor, may it
10 please the Court. My name is David Pikus, P-I-K-U-S.
11 I'm with Bressler Amery & Ross. With the Court's
12 permission, I'd just like to be an observer or maybe
13 more specifically a listener today. I represent a non-
14 party Madeline Cuomo, the Governor's sister, who has
15 been subpoenaed for a deposition, and we'd be interested
16 to hear how Your Honor is handling some of these issues.

17 THE COURT: All right, thank you. Anyone else?
18 Okay, very good. So what I'd like to do is start with
19 just getting a status update from various
20 constituencies. That was the original intent of this
21 call. And then we'll also discuss issues relating to
22 the subpoenas that Mr. Cuomo has served on Ms. Boylan
23 and the OAG, and then we also need to talk about the
24 discovery schedule because the current fact discovery
25 deadline is coming up at the end of this month.

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2 So if I could start with Ms. Bennett. I see
3 that you've produced a substantial number of documents,
4 but if you could update me on whether Ms. Bennett's
5 production is substantially complete, if there's
6 anything outstanding, and anything else about the status
7 of Ms. Bennett's document production.

8 MS. SCHNELL: Yes, Your Honor, and I also can
9 update the Court because we have reached agreement on
10 some of the discovery scheduling issues that I can
11 report to the Court, subject to the Court's approval of
12 course.

13 Ms. Bennett has substantially has completed her
14 document production, of course, with the caveat that she
15 has an ongoing obligation if other things come up to
16 produce it. But, yes, everything she possesses we have
17 produced to defendants and we have told them that.

18 We now have gotten deposition dates for all the
19 defendants, and we have a schedule in place I'm pleased
20 to report to the Court --

21 THE COURT: Great.

22 MS. SCHNELL: -- as well as a schedule for
23 plaintiff's deposition. And given that, we have also
24 conferred with defendants, and we jointly would like to
25 propose to the Court the following schedule for

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completion of discovery. Fact discovery by August 15 with all depositions concluded by June 30 and expert discovery by September 30.

THE COURT: All right. Sorry, September 30 for experts?

MS. SCHNELL: Yes.

THE COURT: All right.

MS. SCHNELL: And I believe in the original court order there's some other dates that would need to be adjusted as well.

THE COURT: Right.

MS. SCHNELL: You know, conferences and things like that, Your Honor.

THE COURT: Sure. Okay, well, I'll have the defendants weigh in on that. Can you just give me a rough overview of the timing of the depositions?

MS. SCHNELL: We have depositions scheduled for Ms. Bennett in March and the four individual defendants in April and May.

THE COURT: Great.

MS. SCHNELL: And we are going to do a couple of third-party depositions that we anticipate will be able to be done in similar timeframe but certainly by the end of June.

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2 THE COURT: Very good, thank you. Okay, I'll
3 have the defendants weigh in on that schedule later.
4 One question I also had for you, one of the issues that
5 Mr. Cuomo has raised in his letter is some videos that
6 Ms. Bennett seems to have taken of herself. Can you
7 tell me when those were produced please?

8 MS. SCHNELL: When they were produced?

9 THE COURT: Yes

10 MS. SCHNELL: To the defendants, recently,
11 Your Honor.

12 THE COURT: Okay, and do you know when those
13 videos were taken approximately?

14 MS. SCHNELL: We do know approximately when
15 they were taken. Defendants have asked us for some of
16 that information. We are preparing a letter, and we're
17 potentially going to meet and confer on some issues
18 relating to those videos.

19 THE COURT: All right, very good, thank you.
20 If I have any other questions for you before I let you
21 go for the moment. All right, I think I'm good on that.
22 Ms. Trzaskoma, anything you want to weigh in about, if
23 you can update me on the status of your client's
24 document production and then anything you want to, any
25 comments you want to add on the proposed schedule?

MS. TRZASKOMA: Yes, Your Honor, good afternoon. So from our client's perspective I'm pleased to report that his production is complete as of today. There have been four productions totalling about 51,000 pages. And I just want to sort of put down on a marker that we are going through Ms. Bennett's production, much of which has been produced to us fairly recently, and I anticipate that we will be coming back to her with follow-up requests and questions about, you know, where, about documents that have not been produced that we would've expected. So that's just a marker that I'm not sure it's document discovery's totally complete from that perspective.

THE COURT: She didn't say it about you, but I imagine she might've (indiscernible) completed today.

MS. TRZASKOMA: Understood.

THE COURT: Yes, I understand. Without prejudice. Any comments on the proposed schedule that Ms. Schnell described?

MS. TRZASKOMA: No, Your Honor. We have agreed to that. I mean obviously our agreement depends, you know, is contingent on resolving some of these non-party discovery issues in a timely way. But that - our hope, sincere hope is that we can achieve this discovery

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schedule.

THE COURT: Great. Very good, thank you. Mr. Morvillo, you or one of your colleagues, could you speak to the status of Ms. DeRosa's production.

MR. MORVILLO: Yes, Your Honor. We should be making another production either tomorrow or early next week, and we anticipate being complete by mid-February, say February 16.

THE COURT: Great. And Ms. DeRosa is one of the depositions that Ms. Schnell described that'll take place in April or May?

MR. MORVILLO: That is correct, she'll know in April.

THE COURT: Very good. All right, thank you. Mr. Delikat for Ms. Mogul, what's the status for her production?

MR. DELIKAT: Ms. Mogul has completed her production and her deposition is now scheduled for April 26. There's one open issue that we're still mtg and conferring with plaintiff about, and that is the length of Ms. Bennett's deposition given there are four separate named defendants in this case and obviously quite a few documents. Hopefully, we'll be able to work that out, but if we can't work that out in terms of

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2 additional time beyond the seven hours, we'll get back
3 to you.

4 THE COURT: Okay, very good, thank you. I was
5 wondering if that might be among the topics that was
6 being discussed.

7 MR. DELIKAT: We're working on it.

8 THE COURT: Okay, good. I appreciate that
9 you're trying to work it out.

10 MR. DELIKAT: Okay, thank you.

11 THE COURT: Mr. Hamid, for your client, what's
12 the status:

13 MR. HAMID: Yeah, thank you, Your Honor. We
14 completed our document production quite some time ago,
15 and our deposition is scheduled for May 9. And so
16 nothing to add.

17 THE COURT: Wonderful. Great, well, that's
18 progress. I realize that there may be some open issues
19 about the parties' document productions, but I
20 appreciate all the progress that the parties have made,
21 and obviously understand that, given that things are
22 still (indiscernible) recently, that there may be some
23 follow-up questions. But I appreciate all the hard work
24 in getting to this point. It doesn't always happen.
25 Very good.

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So now let's move to the issues concerning Ms. Boylan. So, Ms. Trzaskoma, you had filed a letter that provided a link to some videos of Ms. Bennett that I was referring to a moment ago. And so which aspect of the subpoena to Ms. Boylan do you think that the videos are somehow new information and require Ms. Boylan to produce?

MS. TRZASKOMA: Well, so it's not, Your Honor, our letter - our understanding of Your Honor's prior order is that you were, is that it was, you know, your decision for now and that we were permitted to come back if we had further requests or had additional information that could help explain why it is that we made these requests in the first place and why it is that we believe this information is still very important to Governor Cuomo's defense.

And I think, you know, that when we receive those videos, which, of course, had been designated as confidential, and so I will refrain from describing them, but they really bring home to us that there is a very, you know, that Governor Cuomo's defense is a very important one, and it is that Ms. Bennett who, you know, who was a, who professionally, had a professional ambition and a personal ambition to be an advocate for

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2 women who are victims, that she did not frame or
3 describe her experience in the executive chamber as an
4 experience involving sexual harassment until after she
5 spoke with Ms. Boylan. And it was at that time that Ms.
6 Boylan told Ms. Bennett the story about Governor Cuomo
7 that were not true. She we believe lied to Ms. Bennett,
8 Ms. Boylan did, about her own experiences in the
9 executive chamber in order to tap into this desire of
10 Ms. Bennett to be part of that kind of mission.

11 And in those conversations between them, we
12 believe, that was when Ms. Bennett began to recast her
13 experience as an experience of sexual harassment. And
14 we think that that, we think that the videos show very
15 clearly that Ms. Bennett's story changed significantly.

16 And so we need to be able to present that
17 defense, and whether Ms. Boylan's allegations against
18 Governor Cuomo are true is a very important fact for us
19 to be able to establish that they weren't true because
20 otherwise Governor Cuomo will be in the position of
21 really not being able to put on that defense because he
22 won't, the jury will be left with the false impression
23 that what Ms. Bennett heard from Ms. Boylan was true.

24 THE COURT: Well, right, but does it matter --

25 MS. TRZASKOMA: And --

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THE COURT: At the time that Ms. Bennett heard Ms. Boylan's story, did she believe it's true? That's the question to ask Ms. Bennett.

(interposing)

MS. TRZASKOMA: Well, but here's the --

THE COURT: Go ahead.

MS. TRZASKOMA: Sorry, I didn't mean to interrupt you. No, but here's the problem, whether Ms. Bennett believed it or not, in order for us to put on that story, put that story in front of a jury, we have to be able to say at the same time so that the jury understands everything and understands that Ms. Boylan was not, in fact, harassed because that will be highly prejudicial. If all the jury gets to hear that Ms. Bennett heard and believed that Ms. Boylan was sexually harassed by Governor Cuomo and we don't have the opportunity to say, and, by the way, it wasn't true for Ms. Boylan either --

THE COURT: But Ms. --

(interposing)

MS. TRZASKOMA: -- then the jury --

THE COURT: But Ms. Bennett didn't know that or maybe she did, but we don't, at this point in the case, I still don't understand why it matters one way the

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other as far as Ms. Bennett is concerned. I understand that Mr. Cuomo wants to clear his name, but this case involves Ms. Bennett's allegations against him and the other defendants. That's what we're talking about. And --

MS. TRZASKOMA: But we can't do that - sorry. Sorry, Your Honor.

THE COURT: Go ahead.

MS. TRZASKOMA: No, but we cannot prove the defense to Ms. Bennett's claim without getting into Ms. Boylan's allegations. They're inextricably intertwined for Governor Cuomo's defense. And the problem with saying you can - the problem with saying all you need to know is what Ms. Bennett heard and you don't need to look under the hood of that, it's putting Governor Cuomo in an untenable position where he doesn't really have that defense. He can't really put it on because he's, he's in this position of choosing do I put on more evidence of allegations against me in order to show that Ms. Bennett's story changed for a reason or why her story changed at the risk of prejudicing myself by introducing, by voluntarily introducing these irrelevant allegations, you know, otherwise irrelevant. I mean the only reason that Ms. Boylan is relevant is that she was

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having these conversations and telling Ms. Bennett what happened.

THE COURT: What discovery do you have from Ms. Boylan to date? What's the status of the parties' meeting and conferring and Ms. Boylan producing documents to you?

MS. TRZASKOMA: We have no documents from Ms. Boylan. We have been in communication - there are two orders, one in this case and one in Troope 1, for - there's overlap between the orders, that there are ways in which the two orders are different. We have been in conversation with Ms. Boylan's counsel about search terms which is proving to be quite a challenge for us, but we're working on that, Your Honor. The other thing is that we have asked Ms. Boylan to agree that whatever is produced in Trooper 1 can be used in this case and vice versa, whatever's produced under the Bennett order can be used in Trooper 1, and Ms. Boylan's counsel has not agreed to that.

So we're, you know, we don't have anything yet. We're going to have certain things. We have, as Ms. Boylan pointed out in her letter, appealed the discovery decision in the Trooper 1 case with respect to Boylan, discovery related to Ms. Boylan.

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2 But right now we have nothing, and I do think,
3 you know, it is critical for Governor Cuomo's defense of
4 Ms. Bennett's allegations, not to clear his name, he's a
5 defendant in this lawsuit. He did not file this
6 lawsuit. He did not file the Trooper 1 lawsuit. These
7 are lawsuits that were filed against him.

8 THE COURT: Neither did Ms. Boylan. Like she's
9 not here. He's not suing her. She's not suing him.

10 MS. TRZASKOMA: Well, Ms. Boylan is - she's a
11 non-party witness. That is always the case is with non-
12 party witnesses.

13 THE COURT: And I've ordered a lot --

14 MS. TRZASKOMA: That she didn't chose --
15 (interposing)

16 THE COURT: I've ordered a lot of discovery
17 that she's going to have to produce. We talked about -
18 it sounds like there are a ton of communications that
19 fall within the scope of what I have already ordered her
20 to produce and about which you are meeting and
21 conferring.

22 I understand that you're frustrated that you
23 don't have anything now, but you're making this argument
24 as if we're, as if I hadn't already ordered discovery
25 from her. We already understand that she is relevant.

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2 She's not as relevant as the Trooper 1 case because the
3 allegations are different, but clearly her
4 communications with Ms. Bennett are relevant. I have
5 found that, and I've ordered that they be produced.

6 And so what I struggle with is opening the
7 whole floodgates to everything that you've asked for and
8 all the other requests about Ms. Boylan. You're going
9 to get whatever Ms. Boylan said to Ms. Bennett and vice
10 versa. And all that goes to the defense that you were
11 just discussing. What I don't understand is why opening
12 the door to everything else about Ms. Boylan's career in
13 Albany and her relationship or lack thereof with the
14 Governor or anybody else has anything to do with the
15 claims or defenses in this case.

16 MS. TRZASKOMA: Well, Your Honor, it is
17 absolutely critical to Governor Cuomo's defense that
18 when Ms. Boylan spoke with Ms. Bennett, she
19 misrepresented the facts, and we cannot, we cannot make
20 that defense --

21 THE COURT: How? How does that --

22 MS. TRZASKOMA: how did she misrepresent?

23 THE COURT: No. Let me finish. How does the
24 fact that Ms. Boylan was lying, assuming that she was,
25 have anything to do with whether, what Ms. Bennett is

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alleging happened to her, did or did not happen?

MS. TRZASKOMA: I'll try to say this one more time. Governor Cuomo's defense is that Ms. Bennett did not describe, did not complain about sexual harassment, did not complain that Governor Cuomo was sexually harassing her in these, you know, that her allegations about sexual harassment were new after she talked to Ms. Boylan. And it is in the context of that that why Ms. Bennett changed her story at that moment in time is that she believed, potentially, she was told by Ms. Boylan that Ms. Boylan had similar experiences working with Governor Cuomo.

THE COURT: Right.

MS. TRZASKOMA: Right, so fast forward to trial. We're putting on that defense. How can we put on that defense in front of a jury and say Ms. Boylan said to Ms. Bennett she had been, Ms. Boylan had been sexually harassed too without also being able to turn to the jury and say, by the way, jury, Ms. Boylan wasn't sexually harassed. She was lying.

THE COURT: Right, but --

MS. TRZASKOMA: Because the jury's going to be left with the totally false impression that what Ms. Bennett heard from Ms. Boylan was true, and that is

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highly prejudicial to Governor Cuomo. And it is basically saying to us you can't put on that defense because if you do, you're just going to have to let the jury, let that hang out there in front of the jury. And I'm not going to give you the evidence that you need to be able to establish conclusively or by stipulation that what Ms. Boylan said was not true.

THE COURT: I'm sorry that you feel --

MS. TRZASKOMA: Your Honor --

THE COURT: -- keep explaining things to me, Ms. Trzaskoma, but I do appreciate you indulging me. Ms. Perry --

MS. SCHNELL: Your Honor - I'm sorry to interrupt, this is Laura Schnell. May I be heard on some of this? Because the whole premise of what Mr. Cuomo is saying is just wrong on the facts of Ms. Bennett. May I --

THE COURT: I'd like to hear from Ms. Boylan first. I will certainly give you a chance to be heard, but I'd really like to, in order to try to do this in an organized fashion, I'd like to hear from Ms. Boylan next.

MS. SCHNELL: Of course, Your Honor, thank you.

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THE COURT: Ms. Perry.

MS. PERRY: I'm sorry, Your Honor.

THE COURT: Go ahead, if there's anything you want to respond to, then I have several questions for you.

MS. PERRY: Yes. I do think that Ms. Schnell was about to say what I'm probably not as well positioned to say, although I do have some understanding of, which is that they have not begun to establish, and these new materials do not at all establish, that Ms. Bennett at all changed her story on, you know, because of any intervention by Ms. Boylan. These videos do not show that at all. The first in the series of videos, and I, of course, am hamstrung a bit because I do understand that these videos are confidential, but so I guess I will just leave it at that --

THE COURT: I've watched them all, so you don't, I understand generally.

MS. PERRY: Okay.

(interposing)

THE COURT: -- that I don't really understand, but I have watched them all.

MS. PERRY: Okay, so I just look in very general terms as well, but certainly the ones like I can

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2 describe, you know, that involve my client show what I
3 would describe as just support and not manipulation or
4 attempt to, you know, to goad Ms. Bennett in any way.

5 But, you know, apart from that, I guess just
6 with respect to the arguments that go to relevance and
7 proportionality, I'm afraid I just have to repeat what
8 we said the first time and what Your Honor has said only
9 because Ms. Trzaskoma hasn't put forward any new
10 arguments here. All she's asking for really is a mini
11 trial because none, you know, none of the materials that
12 they're asking for, and, again, they really haven't at
13 all pointed to exactly what they'd be looking for in
14 additional requests that would go to, you know, to
15 anything in particular other than what Your Honor has
16 already ordered be produced.

17 But it really is, and I hate to use the tired
18 old expression, but really would be a fishing
19 expedition. Your Honor has ordered that communications
20 between Ms. Bennett and Ms. Boylan be produced. We have
21 proposed search terms last Friday. I don't believe
22 we've heard back yet from the defendant on this, but we
23 have already, we have a universe of potentially
24 responsive documents already segregated, and I believe
25 that they can readily be produced.

And so, you know, Ms. Bennett will stand, you know, on her allegations. This case will be tried on those allegations and the defenses. And I believe the documents that we will produce will either, will substantiate Ms. Trzaskoma's, you know, the defense that she has put forward here that Ms. Boylan had made the whole thing up and has instigated Ms. Bennett or they won't. Of course, our position and Ms. Bennett's position is that they absolutely will not, but the documents that Your Honor's ordered to be produced will show that or they won't. And I think that's really all that I could say about that, and I'm sure Ms. Schnell can add some more.

THE COURT: Thank you. I understand that Ms. Boylan is a non-party, but I am a little disappointed that we're a month from our last conference and we're only just at this stage, we haven't even finalized search terms let alone Ms. Boylan having produced any documents yet. So clearly I'm going to need to monitor you guys and put you on a much shorter timetable if that's going to happen. Because one inference here is that it will help a lot if Ms. Boylan at least produces something to diffuse potentially some of the arguments that Ms. Trzaskoma was just making.

MS. PERRY: Your Honor, we are --

(interposing)

MS. PERRY: -- I think they will support us.

We have been working diligently, and we did provide those search terms last Friday, and we just have not heard back.

THE COURT: Okay, well, could you speak to what Ms. Trzaskoma said she had proposed which was to agree that anything that Ms. Boylan were to produce in the Trooper 1 case could be used here. Obviously, I assume that that proposal is without prejudice to whatever merits arguments or admissibility arguments or anything else would be made, and I'm certainly not saying that everything that's produced in the Trooper 1 case is relevant here. But just as a practical matter, doesn't that facilitate a practical solution here?

MS. PERRY: Well, as Your Honor pointed out, the complaint and the allegations are very different in that case. At the core of the complaint there is an OAD report and, of course the complaint of 11 other women, and that was the basis for Judge Merkel's ruling there. Of course, she significantly narrowed the very broad subpoena there as well.

Having said that, I was not party to the meet

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and confers there. My co-counsel Julie Gerchik was.
And so I actually cannot speak to this, but I would ask
that Ms. Gerchik be allowed to speak to this particular
point if that's okay with Your Honor.

THE COURT: Yes, that's fine. Ms. Gerchik, can
you weigh in on this idea of trying to come to some
agreement about the Trooper 1 materials?

MS. GERCHIK: Yes, absolutely, Your Honor,
thank you. It's our position is that this is what with
respect to judges in both cases say, I'm sorry, just to
be clear, we made this very clear on the call that we
had last Friday that this is up to the parties and the
judges in both cases. So we have reached
confidentiality orders, etc. But if the parties, both,
you know, Judge Merkel (indiscernible) how this case
should proceed, we are fine with that. We basically
just said, you know, we don't have a position, but we're
not going to just agree to do it and do it until we've
heard from respective courts, that's all.

THE COURT: Okay, well, I mean this is the
first I'm hearing that there's even been any discussion
about it. It's not mentioned I don't think in the
parties' letters that some kind of resolution would be
possible. I'm pretty sure that there are other

1 PROCEEDINGS 28

2 materials that, I think as Ms. Schnell alluded to a
3 little while ago, that the parties have agreed could be
4 used in either cases just for purposes of efficiency or
5 at least that there are some categories like that are
6 under discussion. So that's one of the things that I'd
7 like to hear from Ms. Schnell about. But if you're open
8 to considering that, like I said, without prejudice to
9 any of the merits arguments or evidentiary bases or,
10 frankly, even relevance objections but just in terms of
11 efficiency, to save everybody a whole lot of time, to
12 the extent that things only need to be produced once,
13 that is potentially a pragmatic solution here.

14 So, Ms. Schnell, you wanted to weigh in, and if
15 you could speak to the idea of some kind of agreement
16 about information sharing as well.

17 MS. SCHNELL: Yes, first, Your Honor, just the
18 whole premise of the defendant's argument is just
19 faulty. Ms. Bennett complained about sexual harassment
20 to the defendants, Ms. DesRosiers, Ms. Mogul, and Ms.
21 DeRosa in June of 2020, and there are contemporaneous
22 notes of that conversation confirm her complaints and
23 her, what she has said happened has not changed since
24 then. And she first spoke or contacted or had any
25 contact with Lindsey Boylan in December of 2020, six

1 PROCEEDINGS 29
2 months later. So the idea that any contact with Lindsey
3 Boylan made her change her story has absolutely no
4 record base.

5 And I apologize for the fact that we filed that
6 letter that you struck, Your Honor, but the reason we
7 filed it and I should've asked the Court's permission
8 was we find it incredibly horrible for defendants to be
9 filing letters on a third-party subpoena issue calling
10 our client a liar Public documents calling her a liar,
11 to just get it out into the public for no legitimate
12 litigation purpose. And we don't want, we don't think
13 that's a proper use of this Court to be able to file
14 these letters calling our client a liar which is a
15 repetition of what happened right after the Attorney
16 General report and kept going on.

17 THE COURT: Understand. Do you speak to the
18 idea of there being some agreement between the parties
19 and Ms. Boylan about whatever she produces in the
20 Trooper 1 case at a minimum being available here without
21 prejudice to any arguments that the parties might have
22 about how it actually gets used in this case?

23 MS. SCHNELL: Yes, for discovery purposes only
24 but certainly with no agreement that there's any
25 relevance and that it will not be used to justify, since

1 PROCEEDINGS 30
2 we have it, now we get a deposition of Ms. Boylan who is
3 not --

4 THE COURT: I think - I'm pretty sure a
5 deposition of Ms. Boylan is going to happen. To some
6 degree or how long it is and what the topics are is
7 maybe another question. But we've reserved that the
8 last time, but I wouldn't rely on preventing Ms.
9 Boylan's deposition in this case.

10 MS. SCHNELL: Well, but, Your Honor, I mean,
11 again, Ms. Boylan is not going to be a witness in this
12 case. We have said we have no intention of calling her.
13 It is a very different matter than the Trooper 1 case,
14 as Your Honor is aware, where they have not said that.
15 In fact, there's allegations about Ms. Boylan throughout
16 the Trooper 1 complaint. It's very different here. And
17 we are trying to narrow discovery to get this case to
18 trial, and the idea that, you know, they will be able
19 to, again - what they want these documents for is
20 exactly the mini trial, that's what they want. They
21 want to depose her on her own claims which we do not
22 think has anything to do with our case.

23 THE COURT: All right, well, like I said, we're
24 not dealing with the issue of the extent and topics for
25 Ms. Boylan's deposition today, but am I - you're open to

1 PROCEEDINGS 31

2 discussing with Ms. Perry and Ms. Trzaskoma and their
3 colleagues some kind of agreement about a protective
4 without prejudice for sharing of what Ms. Boylan
5 produces in the Trooper 1 case.

6 MS. SCHNELL: Yes, with proper serious
7 confidential provisions, yes.

8 THE COURT: All right, so hopefully let's have
9 the parties meet and confer about that agreement, and
10 we'll hopefully moving that along so that if there are
11 any open issues about it, we'll be in a position to
12 discuss them at our next conference.

13 Ms. Trzaskoma, is there anything else you want
14 to add about Ms. Boylan today?

15 MS. TRZASKOMA: Yes, Your Honor, I just have to
16 correct a couple of points for the record. First of
17 all, Ms. Bennett I don't believe ever spoke with Ms.
18 DeRosa in June or any other time about allegations of
19 sexual harassment or any other complaints like that.
20 Second, she did not - the record is clear that when she
21 complained in June of 2020, when Ms. Bennett complained,
22 that the people to whom she complained, the other
23 defendants, did not believe what she was describing was
24 sexual harassment. And as for calling Ms. Bennett a
25 liar, what our letter points out is that Ms. Bennett's

own words, her own contemporaneous statements demonstrate that the allegations in her complaint are false. We didn't call Ms. Bennett a liar, she called herself a liar.

So that is, you know, what's truly outrageous here is that Ms. Bennett's, you know, allegations that certain conversations were harassing when at the time she described, at the time the conversations happened she described them in a very different way that that's what's outrageous here. That those allegations against Governor Cuomo are out there, it's extremely frustrating then to have, you know, Ms. Bennett who filed complaint against Governor, a public complaint against Governor Cuomo that is full of inaccurate allegations and that somehow there's something wrong when Governor Cuomo filed a letter pointing that out, I'm gob smacked at the suggestion that there's anything improper that we did here.

THE COURT: Right --

(interposing)

MS. TRZASKOMA: And, again, as --

THE COURT: Go ahead.

MS. TRZASKOMA: Yeah, and as for Ms. Boylan, the whole point is to avoid - we're in the discovery

1 PROCEEDINGS 33
2 phase. The questions about the truth or falsity of Ms.
3 Boylan, of what Ms. Boylan said to Ms. Bennett is within
4 squarely within the scope of relevance here. And the
5 whole point of getting that discovery now is so that we
6 can avoid a mini trial. Otherwise, we are going to get
7 to trial, and I would like there to be a stipulation,
8 I'd like there to be an instruction to the jury that the
9 allegations are not true.

10 THE COURT: All right, so --

11 (interposing)

12 MS. TRZASKOMA: Otherwise, if we get --

13 THE COURT: -- we're so far from that concept,
14 Ms. Trzaskoma. So you just said we're in discovery, so
15 let's not, we're not at the final pretrial conference.
16 So please let's focus on what we have here. It sounds
17 like Ms. Boylan's counsel and Ms. Bennett's counsel are
18 willing to engage with you on some kind of agreement
19 that would allow for the sharing of what Ms. Boylan
20 produced in the Trooper 1 case for discovery purposes in
21 this case without prejudice to any parties' arguments or
22 objections as to relevance or evidentiary issues. Can
23 you go back to the table on that and hopefully try to
24 reach some agreement that avoids having to continue to
25 talk about the same things over and over again?

MS. TRZASKOMA: Here's the problem, Your Honor, is that I think, you know, for some of the same reasons, I understand the order, the discovery order with respect to Ms. Boylan and Trooper 1 is we believe and, you know, it is incorrect for the same reason and, you know, precludes discovery into some of the same areas that we've been talking about today. The circumstances, you know, including the circumstances of Ms. Boylan's departure from ESD and whether she left, as she told Ms. Bennett and as she told the world, because of sexual harassment or whether she left for another reason. And so it's, you know, if Your Honor is going, having us meet and confer about a sharing agreement doesn't solve the underlying problem.

THE COURT: Well, I will be clear, that you have not shown me anything that changes my decision at our January 4 conference about which requests Ms. Boylan needs to respond to. Looking at the factors that I have to consider, as I said before, I don't believe that any of the requests other than 1 and 17 are relevant and proportional to any claim or defense in this case.

I understand that the issues in this case are extremely important to both sides and to members of the public as well. But considering also the parties'

1 PROCEEDINGS 35
2 access to information from other sources, the lesser
3 importance of this case of Ms. Boylan, what happened to
4 Ms. Boylan as distinguished from the truth or falsity of
5 Ms. Bennett's allegations, and the extent to which Ms.
6 Boylan producing more as Ms. Cuomo is asking her to do,
7 the extent to which that's going to help us resolve the
8 issues in this case remains, I remain unconvinced about
9 that.

10 And then, finally, I'm also mindful of the
11 burden and expense both to the parties in this case of
12 going down such, going down that road as well as the
13 burden to Ms. Boylan. So the order of January 4 as to
14 the scope of what Ms. Boylan needs to produce in
15 response to the subpoena will stand, but to the extent
16 that the parties can reach an agreement as to what has
17 been ordered to be produced by Ms. Boylan in the Trooper
18 1 case, so its negotiations can continue and hopefully
19 be helpful to letting us move on. And as we've heard,
20 we have depositions coming up, so we should be
21 definitely moving toward getting what we need to get
22 from Ms. Boylan so that we don't have to reschedule any
23 depositions.

24 Is there anything else further with respect to
25 Ms. Boylan that we need to talk about today?

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MR. MORVILLO: Your Honor, this is Greg Morvillo. May I just make two quick points?

THE COURT: Sure.

MR. MORVILLO: So the first is I just want to make sure that the record is completely clear that Ms. DeRosa never spoke to Ms. Bennett about any of this, and I think Ms. Schnell said that she spoke to the defendants. That's not true, she did not speak to Ms. DeRosa. I just want to make sure that that was crystal clear.

And the second issue is back when we last met by phone, we had the discussion about the subpoenas, and Your Honor told us on behalf of Ms. DeRosa with Ms. Boylan to meet and confer about search terms and productions. And I want to make sure that it is, that I understand what's happening here which is that the same general requests that you have ordered Ms. Boylan to search for or produce in relation to the Governor will be done for Ms. Boylan as well, I'm sorry, for Ms. DeRosa as well because I don't want us to get into this do these search terms and have Ms. Boylan's counsel say, well, no, the Judge didn't order us to do that. They just ordered a meet and confer between you two, meaning Ms. Boylan and Governor Cuomo. So I want to make sure

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that Ms. DeRosa is included in that because that was my understanding when we came out of it. I just want to make sure that's still where we are.

THE COURT: Nobody should be siloed here. If you're taking anything away from this, it's that we're only doing this once. And everybody should be communicating with each other and nobody should be left out of conversations in order to get this done.

MR. MORVILLO: Yeah, and but also documents, right, it's not just the conversation. I've been kindly invited to participate in everything, but I mean that Ms. Boylan's supposed to be searching for documents that are relevant to Ms. DeRosa as well. Is that right?

THE COURT: So you should be part of the conversation about what the search terms are so that she's only doing one search.

MR. MORVILLO: Got it. Thank you. Thank you, Judge.

THE COURT: Okay. Someone else wanted to jump in?

MS. TRZASKOMA: Yeah, just briefly, Your Honor, Theresa Trzaskoma. I just wanted to make sure because I think it wasn't entirely clear to us, based on Your Honor's January 4 order, just to be clear, this is Your

1 PROCEEDINGS 38
2 Honor's final order with respect to the subpoena to Ms.
3 Boylan in terms of what (pause).

4 THE COURT: Are you asking so you know whether
5 or not you should appeal? I mean you didn't appeal from
6 the last one and the time to do so has expired. So --

7 MS. TRZASKOMA: No, we didn't appeal because,
8 Your Honor, it did not, I mean we understood the order
9 to be, we understood that the order was provisional and
10 not a final closing of the door with respect to the
11 subpoena.

12 THE COURT: Well, what I said in the order is
13 that you could come back under showing of good cause to
14 try to convince me as to the remaining items. You have
15 not done that. The fact discovery is still ongoing.
16 So, you know, it's still possible. I'm not sure that it
17 - I can imagine the circumstances that would get me to
18 change my mind, but as long as - and we also haven't
19 finalized whether the parties are going to reach an
20 agreement or not. So it's significant to me to
21 understand whether the parties can come to an agreement
22 about sharing of information.

23 (pause in proceeding)

24 THE COURT: I'm not going to advise you about
25 when your time to appeal is running or not, Ms.

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Trzaskoma. That's up to you.

MS. TRZASKOMA: Okay, well, thank you, Your Honor, we'll look at the transcripts.

THE COURT: Okay, thank you. So as far as next steps for Ms. Boylan then, Ms. Perry, you said that you had provided search terms last week. Did you include Mr. Morvillo in the distribution of those search terms?

MS. PERRY: I believe so, Your Honor, again, I wasn't in that meet and confer, but my understanding is that we agreed on the call to include Ms. DeRosa in the searches in that meet and confer. Ms. Gerchik or Ms. Oehlke can correct me if I'm wrong or Mr. Morvillo. But my understanding is consistent with what Your Honor just said just now, and we're happy to do that. It certainly makes sense for efficiency purposes.

THE COURT: Okay, so we'll -
(interposing)

MR. MORVILLO: Your Honor, this is Greg Morvillo. I did receive the search terms. I just want to make sure that you understand we did receive the search terms. We are participating in it. I just wanted to make sure that the documents that were going to be searched would include the terms that we were proposing as well. And I think it's clear enough, thank

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you.

MS. PERRY: Yes, Your Honor, I believe - we sent our emails with proposed search terms on Friday, January 26, and we requested that Mr. Cuomo propose their own, and I believe we have not received anything back. So we're very open to those, but it's been almost a week.

THE COURT: Okay. All right, well, we'll be setting a time for the next discussion and/or status letter. So hopefully that will provide some incentive for people to move things along. Okay, I guess the only last open, potentially open issue with respect to Ms. Boylan though is the letter that Mr. Cuomo had filed that was redacted, there was a redacted and an unredacted version. Ms. Schnell, do you have a position on the unredacting or the public filing of the unredacted version of Mr. Cuomo's letter?

MS. SCHNELL: We are opposed to it, Your Honor.

THE COURT: All right, well, I'll have to take a closer look at that then. Ms. Trzaskoma, do you wish to be heard on the sealing or unsealing?

MS. TRZASKOMA: Yeah, as we noted I think in our letter, Your Honor, we don't think, the videos have

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been designated as confidential, but we don't think they are confidential, but particularly to the extent they relate to Ms. Bennett's public allegations against Governor Cuomo, you know, the letter in its entirety along with the link to the videos should be made public. But even if the videos, the underlying videos are not made public, certainly what is in the letter and what is currently redacted from the public version of the letter is, there is nothing, you know, personally sensitive or, you know, anything that's unrelated to the allegations and should definitely be made public.

THE COURT: Right, I think though we needed something more from you if you want to redesignate it, Ms. Trzaskoma. The order, I'm not sure which order it was, was the one scheduling this conference or striking the letter, but that you needed to follow the procedures in the protective order which includes the additional meeting and conferring. I mean we've sort of done that here a little bit, but if I could ask you to just meet and confer with Ms. Schnell just one more time and see if there's a way even to minimize the redactions in the letter so that as much of it as possible could be publicly filed, and that's another thing that you'll update us on between now and then. But for now --

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2 MS. TRZASKOMA: Yes, Your Honor, we certainly
3 will.

4 THE COURT: Okay, great. For now the letter
5 will remain as it is, but you can renew the request for
6 unsealing or revising the redactions in due course.
7 Okay, anything else on Ms. Boylan before we move to the
8 Attorney General? Okay.

9 All right, so thank you, Ms. Longley, for your
10 patience. I hoped to get to you sooner, but I
11 appreciate you bearing with us. So as I understand it,
12 since our last conference on January 4, there has been
13 an Article 78 proceeding that's been filed in state
14 court. Can you update me on the status of that
15 proceeding? I know it was filed by Mr. Cuomo, but what
16 the Attorney General's deadline is for responding and
17 the future of those proceedings.

18 MS. LONGLEY: Hi, Your Honor, yes. It is true
19 Cuomo did file an Article 78 against the Attorney
20 General. That is, I think that the Court automatically
21 set the deadline around February 20 I want to say for
22 our office to respond, but we're in the process of
23 extending that. It hasn't been set yet.

24 THE COURT: Okay. And what is the - I
25 understand you'll file a written response, but then

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after that what happens? Is there some discovery period or is there just a hearing in front of, in the state court or?

MS. LONGLEY: So under Article 78 discovery is not automatic, it's disfavored, and it's unlikely, I mean and I don't know, I don't know if the petitioner, Mr. Cuomo, would seek discovery. I think we would oppose that. Article 78 proceedings are designed to be somewhat streamlined, quicker proceedings than your average action in state court, and so I don't think it's likely there'll be discovery. It'll probably be decided on papers. Sometimes there's oral argument. It really depends on the judge.

THE COURT: And are the objections that the Attorney General may have, and I realize you haven't filed your response yet, but are they the same objections generally that the Attorney General has lodged to the subpoena in this case? In other words, sovereign immunity, privilege, etc.

MS. LONGLEY: Yes. So they won't be unless largely because the standard is different under Article 78, and it's a different, you know, and the Article 78 standard is really, it's about is the public entitled to disclosure of the information, the record that is being

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2 sought. And so there's, that, there's a set of
3 different standards, there's different exemptions. Many
4 of the exemptions recognize privileges. But one of the
5 biggest issues at play in the Bennett, in response to
6 the Bennett subpoena is, of course, sovereign immunity,
7 and under the Article 78 proceeding standard, there is
8 no sovereign immunity defense for our office to raise.
9 So we won't be raising that, so that issue's out.

10 Many of the privileges are the same, but we
11 don't have relevance or really proportionality
12 arguments. It either can be burden arguments. But,
13 again, you know, we're sort of at the early stages. The
14 petitioner in that case waited until the final day to
15 file. They could've filed that Article 78 sooner.

16 The other this is that the Article, the FOIL
17 process is still underway, so their actual Article 78
18 petition against office may be premature, and that's
19 another issue that will get briefed by us.

20 THE COURT: So it's possible, if the Attorney
21 General were hypothetically just to produce what it is
22 Mr. Cuomo's asking for, it could be mooted?

23 MS. LONGLEY: Yes, Your Honor, yes. And
24 there's a production, you know, there's ongoing review
25 and potential production, and really what Mr. Cuomo has

1 challenged is the amount of time that the Office
2 estimated it would take to do the review, and he is
3 calling that a, quote, "constructive denial." We don't
4 think it is. We think the FOIL, the FOIL request that
5 he made to our office is still open and actively being
6 worked on by the office.
7

8 THE COURT: All right, thank you. Okay, so I'm
9 just - we had punted on the Attorney General issues for
10 a different reason which was to see whether anything had
11 happened in the proceeding in front of Judge Merkel.
12 So, Ms. Longley, can you speak to that, whether there
13 have been any developments that I should be aware of in
14 terms of her - I believe she was undergoing a privilege
15 review of some of the memos.

16 MS. LONGLEY: Yes, Your Honor, we haven't
17 received any additional rulings or orders from Judge
18 Merkel. We understand that the arguments are still
19 under review, and specifically there is a pending motion
20 for reconsideration that Mr. Cuomo filed. That hasn't
21 been ruled on. And as we discussed at the last
22 conference, we did provide a privilege log, we've
23 provided some documents that Judge Merkel asked for in
24 camera review. We've submitted those. And we haven't
25 heard from her yet, and we don't have a, we don't have

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anything giving us a sense of when we will hear from her, but I do expect that we will hear from her and that she is reviewing the materials in anticipating, in anticipation of making some rulings that would bear on the same issues that are now, that the defendant Cuomo in the Bennett case is seeking, the premotion conference here, so that he can move to compel.

THE COURT: All right, Ms. Trzaskoma.

MS. TRZASKOMA: Yes, Your Honor, I guess I have a few things to add here. So, first of all, so I think it should be clear to Your Honor that if we have any hope of complying with the discovery schedule that we just talked about at the beginning of this call, we really need to get the issues relating to the AG's subpoena. The subpoenas both to the Office of the Attorney General as well as our subpoenas to the Cleary law firm and to the Vladeck law firm. I don't think that we should wait either for the Article 78 proceeding which sounds to me, reading the tea leaves, like there's going to be, there are going to be some procedural arguments about whether we, you know, our filing was mooted or not mooted or partially mooted. But they have the, the Attorney General's Office has asked for a significant extension to respond to that. We, you know,

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2 in part because of discovery deadlines in this case and
3 in Trooper 1, we have not agreed to that, but I don't
4 know whether the court in the Article 78 proceeding will
5 agree.

6 We also, you know, just on Judge Merkel's
7 privilege review, the materials that are in front of
8 Judge Merkel for her privilege review overlap in some
9 respects with what we are seeking from the Attorney
10 General in this case, but they are far from identical
11 universes of information. So it's entirely possible
12 that Judge Merkel will make certain rulings in Trooper 1
13 as to privilege claims that won't obviate the need for
14 this Court to do the same thing with the materials that
15 have been requested here.

16 And then, finally, Your Honor, just on this
17 sovereign immunity point, I know that in Ms. Boylan's
18 letter from yesterday and in the now stricken letter
19 that there have been references to a settlement
20 agreement between the Department of Justice and the
21 executive chamber, and we are, Governor Cuomo, neither
22 Governor Cuomo nor his former senior leadership
23 including the defendants in this case were ever
24 contacted about that investigation. So we have been
25 trying to figure out what if anything the Department of

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Justice did to investigate. It appears to us that the Department of Justice relied on the investigation that the AG's office conducted.

And so part of that - for example, Ms. Bennett confirmed that the AG or that the Department of Justice never contacted her or spoke with her. We have asked Ms. Boylan whether she was interviewed by the Department of Justice, and her counsel has not responded to that question. And we did ask the Attorney General's Office whether the AG's office had provided to the U.S. Department of Justice any additional materials that were not otherwise made public because in our view any such production by the AG's office would be wholly inconsistent with the claim of sovereign immunity that they're relying on to resist this federal court subpoena and, indeed, would constitute a waiver, you know, as to those materials for sure and potentially a broader waiver.

When we asked Ms. Longley whether the AG produced to DOJ any additional materials, Ms. Longley declined to tell us, and, in fact, you know, declined to tell us whether there was a production; if there was, what it consisted of; and instead made reference to potential confidentiality agreement that may have been

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2 relied on in making a production if a production
3 occurred. And I'll just read what Ms. Longley said
4 exactly so that I'm not, so that I'm being clear. I'm
5 just trying to pull up her email. But in any event, she
6 said, "With respect to the DOJ investigation that has
7 corroborated AG's investigative findings, we decline
8 your request to provide any additional information about
9 what may have been shared, if anything, under
10 confidentiality agreements with other law enforcement
11 agencies."

12 And, you know, to that point, Your Honor, the
13 branch of the federal government that was conducting
14 that investigation was the Civil Rights Division, and
15 they were conducting an investigation to determine
16 whether to bring a civil lawsuit against the State. And
17 so we have real questions about what happened there. I
18 think it's, as I said, it's entirely possible DOJ did
19 nothing more than look at what was in the public record.
20 That's certainly, or little more than what was look -
21 they did little more than look at what was in the public
22 record that has been what's reported in the press. But,
23 you know, we do need to know from the Attorney General's
24 Office what they turned over if anything that is among
25 the materials we're seeking here for the subpoena.

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THE COURT: All right, so how do we move this along? I'm already pretty far behind - both the Article 78 proceeding is probably going to get resolved before I can get these issues teed up. Judge Merkel may very well as well. So what're you proposing, Ms. Trzaskoma, for how we move forward? Are you wanting to move to compel against the AG? Are you wanting to move to compel against Cleary and Vladeck? Are you wanting me to do a privilege review? And hopefully not all of the above.

MS. TRZASKOMA: Well, I think, I mean, look, I think if the Court is going to credit in any way the sovereign immunity arguments, we need to tee up motions to compel all three subpoenas and get those underway because otherwise we, you know, we aren't going to be able to comply with the discovery schedule.

THE COURT: All right, well, when can you file your motion to compel? Or motions.

MS. TRZASKOMA: Yeah. Can I - would it be all right if we alerted the Court later today with a proposed schedule?

THE COURT: Yeah --

MS. TRZASKOMA: Understanding that we'll do it on an expedited basis.

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THE COURT: It's going to be expedited, and it's going to be a lot shorter. I'm not getting three separate 25-page briefs from you. So I would strongly urge you to make it be one motion, and I know that the issues may be slightly different as to the law firms but they should be the same, at least as to the law firms. So consider how --

(interposing)

MS. TRZASKOMA: Yeah --

THE COURT: Go ahead.

MS. TRZASKOMA: Yeah, certainly the privilege issues are the same, but the sovereign, it's the question of sovereign immunity is slightly different in the context of the law firms.

THE COURT: Okay. But have you briefed all these issues in front of Judge Merkel already, sovereign immunity as well as the privilege issues?

MS. TRZASKOMA: We have briefed some of these issues, not all of them, and Judge Merkel noted that the briefing that was done on sovereign immunity, that if she were going to reach that issue, she would need to require additional briefing. So I think there's more that we need to say and that we can say and that we will say.

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THE COURT: Okay, well, propose what you want to propose, but if I adopt this schedule, this is not a reason to take us off track of August 16. It is what it is. If it turns out that there's more that comes from the AG and we have to redo some, reopen some depositions, then that's fine, but the parties should be aware that this is not a reason to take our foot off the gas on everything else that we've been talking about. Because all these issues are so uncertain, and the timing of having them need to be resolved is uncertain. And so we need to do everything that we can, that we're finishing the things that we can finish, and this is not a reason to drag things out.

So if you want to file a letter, Ms. Trzaskoma, by tomorrow morning, if you can confer with all of your, all the other counsel on this call and reach an agreement and as to a proposed briefing schedule, I'll consider it and I'll have to consider what else I have going on and when I'll be able to get to it.

MS. LONGLEY: Your Honor --

MS. TRZASKOMA: Understood.

MS. LONGLEY: Hi, Your Honor, this is Serena Longley from the AG's Office. Can I just respond and raise a few issues regarding this proposed date for

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2 briefing of the motion to compel? One just sort of
3 technical issue is that I did try to raise the subpoenas
4 to the law firms on the last conference, and Your Honor
5 said it wasn't before you because it hadn't been
6 presented in a pre-motion letter, and that's still the
7 case. Defendant Cuomo still has not, in asking for that
8 to be brought up. So we - I think under your rules it
9 is premature.

10 That said, I do think that legal issues are
11 exactly the same and that the sovereign immunity defense
12 is exactly the same. And so I'm not looking to be
13 overly technical or difficult, but I do think there's a
14 reason. The subpoenas to the firms and sovereign
15 immunity there hasn't been briefed before Judge Merkel
16 because when Cuomo raised it before Judge Merkel, she
17 said it was a non-starter and that they were acting as
18 our agents and our attorneys, and there's no way that
19 they could get around sovereign immunity by subpoenaing
20 our lawyers.

21 So I think as non-parties who haven't even been
22 properly, you know, brought before, this issue hasn't
23 been presented properly for this conference but that it
24 is a significant expense and burden on us as a non-
25 party, on these law firms to have to litigate three

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2 times over, actually six times over if you think about
3 it with the Trooper 1 case, the brief, you know, brief
4 and litigate the various subpoenas - sorry about that
5 noise - from Cuomo on this. I think it is unduly
6 burdensome and inappropriate use of resources to have to
7 litigate that.

8 We still maintain our position that we should
9 wait for a ruling from Judge Merkel because the
10 sovereign immunity issues and some of the privilege
11 issues could have preclusive effect here on defendant
12 Cuomo in the Bennett case. And so we stand by that, and
13 given our non-party status, given Your Honor's previous
14 concerns about conflicting rulings including conflicting
15 privilege rulings, we don't think that it makes sense
16 for us to have to brief everything again here before
17 Your Honor or for our law firms and agents to have to
18 also join in the briefing.

19 THE COURT: All right, well, you make a good
20 point about the law firms who obviously are not here
21 unless they are here and they haven't told me. So what
22 we can do it is we'll do the letter, meet and confer and
23 letter back and forth between now and our next
24 conference. So - and we'll talk about the dates for
25 that in a second. So the briefing schedule that you

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provided to me, I'm going to assume that even if the law firms appear, that they're not going to be producing anything and they're going to stand on the same objections. So I think we can assume that the briefing will have to go forward. But I should hear from them, but there's a possibility I shouldn't necessarily assume that.

MS. TRZASKOMA: Your Honor, may I just - it's Theresa Trzaskoma. Just briefly. We did have a meet and confer with the Cleary and Vladeck firms and are in the process of putting a pre-motion conference letter before Your Honor. But I think we know where this is headed, which is we're going to have to brief, we're going to have to brief these issues as to all the subpoena recipients, and, you know, it's inefficient to, I mean it's completely inefficient to do it on a staggered schedule or to just wait. But if --

THE COURT: Well --

(interposing)

MS. TRZASKOMA: -- Your Honor wants us to --

THE COURT: -- are not here, I have not heard anything from the law firms. So I should have an opportunity for them to talk me out of why we even need to brief this, for example. So we can set a schedule,

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you can set a schedule for --

MS. TRZASKOMA: Yes.

THE COURT: -- the AG briefs and that process can get started, and there's some issues that, you know, as we've discussed, are unique to the AG that could be decided separately from the law firms. You know, there's several different ways potentially do this. But I should at least, Ms. Longley is right that I have not so far heard from the law firms, and they should have an opportunity to tell me why they think we shouldn't have a briefing schedule as to them. Was there something else --

MS. TRZASKOMA: No --

THE COURT: Go ahead. Go ahead.

MS. TRZASKOMA: No, that's fine, Your Honor. I mean I think that's fine. I will - I do want to correct the record because Judge Merkel did not have, did not have the benefit of any briefing when she made the offhand comments that Ms. Longley was referring to, and those issues have not been teed up for Judge Merkel. So I think it's appropriate - but we'll put that in our letter. I just want to make sure the record's clear that Judge Merkel has not remotely ruled on this issue.

MS. LONGLEY: But she did, Judge Merkel did

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2 stay any further briefing or litigating over those
3 subpoenas because, and she didn't need briefing to rule
4 essentially that, or at least stay those and say that
5 the legal issues and arguments are the same, the
6 sovereign immunity defense is the same, they're our
7 agent, and that she's going to resolve the subpoena
8 directed at OAG first and then deal with the subpoenas.
9 Because it's going to be the same outcome.

10 So she didn't need briefing. I didn't suggest
11 she had briefing. I said she wouldn't even entertain
12 briefing because, frankly, it's really a frivolous
13 argument and a huge waste of everybody's time and
14 resources to be subpoenaing our lawyers who are also
15 deputized as agents of the Office of the Attorney
16 General and to try to get like materials from them that
17 you can't get from us. It's just, it's a non-starter as
18 Judge Merkel said.

19 THE COURT: Well, I've read the transcripts,
20 and I understand what you're referring to, but in
21 fairness I will, we will set a time, Ms. Trzaskoma, for
22 you to file your letter about the law firms, they'll
23 have a chance to respond, and we'll have them on, we'll
24 have them join us at the next conference.

25 All right, Ms. Longley, was there something

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else, you had a couple of points you wanted to make.
Was there something other than the procedural posture?

MS. LONGLEY: It was, I think if you're referring to procedural posture, it's just renewing our position that we set forth at the last conference that we think that it makes sense and it's appropriate given our non-party status to wait for Judge Merkel's ruling before we have to brief the subpoena for the same types of materials and the same objections before Your Honor.

THE COURT: I hear your objection, and I share your view that it would be, I would prefer not to have this be decided twice, but at the same time I can't hold up this case. If we don't try to start moving this forward, the risk is that Mr. Cuomo comes in and says, well, we still haven't decided the OAG issue here, and then we're starting from scratch. So we're already, you know, by my waiting a month in the hope that there might be some clarity, in fact, what's happened over the course of that month is there's even less clarity because we now have the Article 78 proceeding. And I'm not saying that's causation; it's just unfortunately we haven't moved to resolution of the AG issue any further forward in the last month, and so I need to do something in this case to make sure that it does get teed up.

MS. LONGLEY: Okay, Your Honor, I completely understand. Can I just make two comments? One is, you know, as far as the Article 78 proceeding and the impact here, I don't really understand how that is relevant here. And I will also just say I mean they, we suggested to Cuomo's attorneys over a year ago that they try to get materials through FOIL and then eventually Article 78. They've only very recently submitted FOIL requests, and now that's working its way through the regular process. So I'm not really sure what that has to do with scheduling here.

But separate and part I do have a suggestion, respectfully, that perhaps I wonder if it would be appropriate or make sense for your chambers to contact Judge Merkel's chambers and just see if there's a sense on timing there. We haven't done that ourselves, but I wonder if it would be something that would make sense and be in the interests of judicial economy and avoid, you know, just to have a sense of the timing and maybe save us from briefing --

THE COURT: You want me to call Judge Merkel and say can you hurry up so I don't have to do any work? That's not going to go over well.

MS. LONGLEY: Okay, I didn't mean it like that.

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Just, you know, if she knows that there's going to be a decision, you know, in the next week or two, that might be relevant to how you're treating the briefing schedule here or, you know, whether there's going to be briefing.

THE COURT: If we get probably down the road in the briefing and something happens that means that we don't have to go forward with it, I will be the first one to shout up and cheer. But we need to get something in place to move this forward. So I appreciate the creative suggestions, Ms. Longley, but I'm not going to ask Judge Merkel when she's going to rule.

So, all right, so let's - are there any other issues before we get to talking about scheduling that anybody wants to raise? Okay. So my suggestion is that we have our next conference at 4 o'clock on Monday, February 26. Ms. Schnell, how is that for you and your team?

MS. SCHNELL: That's fine with me, Your Honor.

THE COURT: Okay. Ms. Trzaskoma.

MS. TRZASKOMA: The 26th, that's 4, that's fine for me. I'm hoping Ms. Glavin can weigh in - yes, she said it's okay for her too and for us. Thanks.

THE COURT: Great. Mr. Morvillo, you or somebody from your team.

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2 MR. MORVILLO: That works for us, Your Honor.

3 THE COURT: Great. All right, Mr. Delikat.

4 You're on mute, Mr. Delikat? Or we lost you altogether.

5 Somebody from Ms. Mogul's team can weigh in.

6 MS. MESSINA: This is Brianna Messina from

7 (indiscernible) team. Someone from our team can be

8 available then

9 THE COURT: Okay, good, thank you. Mr. Hamid
10 or Ms. Rosenberg could join.

11 MR. HAMID: Yes, we'll cover. That's fine,
12 thank you.

13 THE COURT: Ms. Longley.

14 MS. LONGLEY: Yes, Your Honor, that's fine.

15 THE COURT: Okay. And, Ms. Perry, you or
16 somebody from your team?

17 MS. PERRY: Oh, I was hoping not to be there --
18 (interposing)

19 THE COURT: It's possible that if you've agreed
20 on search terms and you're off to producing documents,
21 you may not need to be heard at all. But just in case
22 there are any issues that I need to work out, then I --

23 MS. PERRY: Yes, Your Honor, we'll be there.

24 THE COURT: All right. So then - so, Ms.

25 Trzaskoma, you're going to propose to me a briefing

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2 schedule for the AG motion to compel, but as to the law
3 firms I think what we need is a pre-motion conference
4 request from you with respect to the law firms and then
5 enough time for them to respond before the 26th so that
6 they can then participate.

7 MS. TRZASKOMA: Yes, Your Honor, we'll make
8 sure that happens.

9 THE COURT: So can you file your letter by,
10 say, the 9th, next Friday?

11 MS. TRZASKOMA: The 9th is extremely difficult,
12 but could we do it on the 12th?

13 THE COURT: The 12th is fine. And then they'll
14 have, I'll give them until the following Tuesday, the
15 20th, which is a little bit more than normal, but I'm on
16 criminal duty that week anyway, so I won't be thinking
17 about this much. All right. And then I am prepared to
18 adopt the parties' proposed schedule. Are there any of
19 the dates, Ms. Schnell, that you wanted to address or
20 should we just, using the fact discovery deadline of
21 August 15 and depositions of June 30 and expert
22 discovery of September 30, leave it to us to fill in the
23 remainder or do you want to just submit a proposal?

24 MS. SCHNELL: I don't think there's anything
25 else, Your Honor. I'm just looking at the old one.

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Other than, there was a date for a post-discovery conference and a date by, to submit a joint letter updating the Court on the status, you know, dispositive motions. And so those dates need to be put in as well.

THE COURT: We'll set those. Wouldn't it be a happy day when we are thinking that --

MS. SCHNELL: (laughs)

THE COURT: -- fact discovery.

MS. SCHNELL: We look forward to getting to those dates.

THE COURT: I'm sure. I'm sure. Okay, Ms. Schnell, anything else you'd like to raise from the plaintiff's side today?

MS. SCHNELL: No. No thank you, Your Honor.

THE COURT: Great. Anything else any of the defendants would like to raise?

MS. TRZASKOMA: No, Your Honor, thank you.

THE COURT: All right, Ms. Longley, thank you, and, Ms. Perry, thank you for sticking with us this whole time, I appreciate it. And then I guess the only, the last thing is, since we're having a conference on the 26th, we'll set a deadline for the parties to submit letters with any issues, aside from the law firm issue, any other issues that are ripe to address at the

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conference. That'll be sometime the week before. Okay?
Very good. Thank you so much, everyone, have a good
afternoon. We'll be adjourned.

MS. SCHNELL: Thank you, Your Honor.

ATTORNEYS: Thank you.

(Whereupon the matter is adjourned to February
26, 2024 at 4 p.m.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of BENNETT v. CUOMO, et al., Docket #22cv7846, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature

Carole Ludwig

Carole Ludwig

Date: February 4, 2024